IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Prem Prakash Mathur v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.3971/2004
under Article 226 of the Constitution of India.

Date of Order : 20th September, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Kuldeep Mathur, for the petitioners.
Mr. S.N.Tiwari, Dy. Govt. Advocate.

BY THE COURT :

By an order dated 19.11.1992 the petitioner was placed under suspension as a case against him in respect of criminal offence under Section 5(1)(d)(2) of Prevention of Corruption Act, 1947 read with Sections 420, 467, 468, 471 read with 120-B IPC was under trial.

By this petition for writ a challenge is given by the petitioner to continuance of his suspension for a period of about 13 years.

It is contended by the petitioner that though since November, 1992 he is under suspension but the respondents are not reviewing the same and as such the petitioner is facing stagnation not only in service career but in life too. It is contended that prolong suspension of the petitioner is arbitrary, unreasonable and unjust, therefore, the same is required to be revoked.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioner is facing trial for serious charges for criminal offence, therefore, till completion of criminal trial the petitioner is required to be kept under suspension. It is also averred in the reply that as per circular dated 10.8.2001 issued by Government of Rajasthan an employee who is facing criminal trial is not required to be reinstated till he is acquitted from the charges levelled.

Heard counsel for the parties.

It is the position admitted that the petitioner was placed under suspension in the month of November, 1992. The appointing authority or any

authority to which appointing authority is subordinate or any other authority empowered by government may place a government servant under suspension where a case against him in respect of any criminal offence is under investigation or trial. The petitioner being facing a trial for criminal offence was placed under suspension. The Government of Rajasthan by its circular dated 10.8.2001 issued guidelines to its competent officers to the effect that no public servant who is facing criminal trial be reinstated by revoking suspension till he is acquitted from the charges levelled against him. The circular referred above relates to the government servants who are facing criminal trial pertaining to the charges of moral turpitudes. It is true that the petitioner is also facing charges of serious nature involving moral turpitude but in present case it is required to be seen as to whether retention of petitioner under suspension is really warranted in the existing circumstances.

It is well settled that an order of suspension is not an order imposing punishment on a person but is an order made against him before he is found guilty to ensure smooth disposal of the proceedings initiated against him. The proceedings so initiated should be completed expeditiously. In event the disciplinary proceedings or the criminal trial, as the case may be, do not reach to their logical

consequence within a reasonable period then it is required that the appointing authority or the authority competent to place public servant under suspension should review the decision to continue such servant under suspension. This Court in similar circumstances in the case of Shaukat Ali v. State of Rajasthan & Ors., reported in WLR 1992(S) Raj. 855, held as under:-

> "Though technically and legally suspension is not a punishment but the ground reality is that in worse than a punishment. It results in the humiliation of an employee not only before the members of the family but also in the eyes of the world at large. A disciplinary authority or its superior is empowered to place an employee under suspension with a view that enquiry proposed to be held by it is not hampered with and delinquent employee is punished for this misconduct. However, suspension of government employee without expeditiously proceeding with a departmental enquiry or with a criminal case result in grave and serious consequences. On the one hand, it demoralices the government servant; on the other the government has to pay him subsistence allowance over a long period without taking any work from him and virtually a delinquent officer is paid for setting idle. All governmental executive action has to be inspired by dictates of reasonableness, Unjust and arbitrary actions are anathema to the rule of law. Principles

> of natural justice require that a departmental enquiry, and for the matter a criminal trial, should be conducted expeditiously and without loss of time. If this is not done, the executive government may keep a person under continued suspension for any number of years and in case eventually the charges are found to be groundless or not proved, it may have to pay him heavy arrears of salary etc. I am in agreement (with due respects) with their Lordship of the Madras High Court when the say that there is a very clearly a distinct principle of natural justice, that an officer is entitled to ask if he is suspended from his office because of grave averments or grave reports of misconduct, that the matter should be investigated with reasonable diligence, and that charges should be framed against him within a reasonable period of time and if such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distress, for an indefinite duration."

In the present case there is no allegation against the petitioner that he has in any way delayed the trial of criminal case. The only reason given by the respondents is that the circular dated 10.8.2001 restrains reinstatement of a government servant by revoking his suspension till he gets acquittal from the criminal charges. In my considered opinion the

circular dated 10.8.2001 cannot curtail the discretion vested with the appointing authority with regard to placing, continuing or revoking suspension of a government servant. The appointing authority or the authority competent under Rule 13 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 is required to exercise the powers vested with him independently by taking into consideration all the facts, circumstances and the legal position existing.

In the present case the petitioner is facing suspension since November, 1992. His prolong suspension is certainly arbitrary, unreasonable and unjust. The respondents failed to show any reasonable cause for prolong suspension of the petitioner. The respondents to ensure that criminal trial continuing against the petitioner remain unhampered he may be posted and transferred at a place where he may not be in a position to create any obstacle in progress of the proceedings. However, I do not find any just and valid reason to continue the petitioner under suspension.

I, therefore, accept this writ petition and quash the continued suspension of the petitioner. The respondents are directed to pass an order to revoke suspension of the petitioner within a period of 15 days, the petitioner serves a certified copy of this

order upon Secretary to the Government of Rajasthan, Department of Personnel (Group-III), Jaipur.

Parties to bear their own costs.

(GOVIND MATHUR),J.

kkm/ps.